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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/328,816	12/16/2011	Jayasimha Nuggehalli	49986-0731	4448

29989 7590 07/28/2017
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EXAMINER

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ART UNIT	PAPER NUMBER
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2142

NOTIFICATION DATE	DELIVERY MODE
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07/28/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAYASIMHA NUGGEHALLI, JIANG HONG, GUILUAN LUO,
ZHENYU LU, and DEEKSHA SHARMA

Appeal 2017-004735
Application 13/328,816¹
Technology Center 2100

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest identified by Appellants is Ricoh Company, Ltd. App. Br. 2.

STATEMENT OF THE CASE

Introduction

Appellants' described and claimed invention relates generally to "creating and managing pricing models and subscriptions for packages." *See Abstract.*²

Claim 1 is representative and reads as follows (with the disputed limitations *emphasized*):

1. An apparatus for managing a package of computer-implemented applications, the apparatus comprising:

one or more processors; and

a memory storing instructions which, when processed by the one or more processors, causes:

generating and transmitting to a client device first graphical user interface object data which, when processed at the client device, causes a first graphical user interface object to be displayed at the client device, wherein the first graphical user interface object identifies a package;

generating and transmitting to the client device second graphical user interface object data which, when processed at the client device, causes a plurality of graphical user interface objects to be displayed at the client device, wherein the plurality of graphical user interface objects are associated with and identify a plurality of computer-implemented applications that implement a plurality of computer-implemented services and that are available for the user to assign to the package;

receiving, from the client device, first user selection data that indicates a user selection for assignment, to the package, of

² Our Decision refers to the Final Office Action mailed Oct. 14, 2015 ("Final Act."), Appellants' Appeal Brief filed Apr. 18, 2016 ("App. Br.") and Reply Brief filed Jan. 23, 2017 ("Reply Br."), the Examiner's Answer mailed Nov. 22, 2016, and the original Specification filed Dec. 16, 2011 ("Spec.").

two or more computer-implemented applications from the plurality of computer-implemented applications;

in response to receiving, from the client device, the first user selection data that indicates *the user selection for assignment, to the package, of the two or more computer-implemented applications* from the plurality computer-implemented applications, generating first assignment data that indicates an assignment of the two or more computer-implemented applications to the package;

generating and transmitting to the client device third graphical user interface object data which, when processed at the client device, causes a second plurality of graphical user interface objects to be displayed at the client device, wherein the second plurality of graphical user interface objects identify a plurality of pricing models that are available for the user to assign to the package;

receiving, from the client device, second user selection data that indicates a user selection of a pricing model to be assigned to the package; and

in response to receiving, from the client device, the second user selection data that indicates the user selection of the pricing model to be assigned to the package, generating second assignment data that indicates an assignment of the pricing model to the package.

App. Br. 17–18 (Claims App’x.).

Rejections on Appeal

Claims 1–20 stand rejected under 35 U.S.C. § 101 as failing to recite patent-eligible subject matter.

Claims 1–20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.

Claims 1–20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fox et al. (US 2004/0128250 A1; published July 1, 2004) (“Fox”).

ANALYSIS

Rejection of Claims 1–20 under § 112, Second Paragraph

The Examiner found there is insufficient antecedent basis for the limitation “a user selection for assignment to the package of two or more computer-implemented applications,” as recited in independent claims 1, 8, and 15, because, at the point in which the limitation occurs in the claims, there is no basis for a claim limitation of a package that is of two or more computer-implemented applications. *See* Ans. 8. Appellants argue the plain and ordinary meaning of the aforementioned claim language is that the first user selection data indicates the user selection for assignment of the two or more computer-implemented applications to the package, not that the package is a package of two or more computer-implemented applications. *See* Reply Br. 1–2 (referring to Appellants’ “Reply to Office Action with Amendment” filed Dec. 10, 2015 (herein “Reply”)).³

³ The Examiner first introduced the rejection in the Final Office Action. *See* Final Act. 17. In the Reply, Appellants traversed the rejection based on the aforementioned argument. *See* Reply 12. In an Advisory Action dated Feb. 3, 2016 (“Advisory Act.”), the Examiner indicated the rejection was rescinded. *See* Advisory Act. 2. After Appellants submitted their Appeal Brief, the Examiner re-introduced the rejection in the Examiner’s Answer, and took the position that Appellants’ arguments in the Reply were not persuasive. *See* Ans. 8. Under these circumstances, we do not treat Appellants’ argument as being waived, even though the argument first appears in Appellants’ Reply Brief and was not included in Appellants’ Appeal Brief. *Cf.* 37 C.F.R. § 41.41(b)(2) (“[a]ny argument raised in the

We are persuaded the Examiner erred. We agree with Appellants that the plain and ordinary meaning of “a user selection for assignment to the package of two or more computer-implemented applications,” is that the first user selection data indicates the user selection for assignment of the two or more computer-implemented applications to the package, rather than the package is a package of two or more computer-implemented applications. Thus, we conclude claims 1, 8, and 15 are not indefinite.

Accordingly, we do not sustain the Examiner’s rejection of claims 1, 8, and 15 for indefiniteness under 35 U.S.C. § 112, second paragraph. We also do not sustain the Examiner’s rejection of claims 2–7, 9–14, and 16–20, which depend from one of claims 1, 8, and 15.

Rejection of Claims 1–20 under § 102(b)

The Examiner finds Fox teaches, *inter alia*, “generating and transmitting . . . third graphical user interface object data which . . . causes a second plurality of graphical user interface objects to be displayed . . . wherein the second plurality of graphical user interface objects identify plurality of pricing models that are available for the user to assign to the package,” “receiving . . . second user selection data that indicates a user selection of a pricing model to be assigned to the package,” and “generating second assignment data that indicates an assignment of the pricing model to the package,” as recited in claims 1, 8, and 15. *See* Ans. 11–13. Appellants argue Fox fails to teach or suggest the aforementioned limitations, as Fox describes a graphical user interface that displays a set of pre-defined game

reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown”).

packages with pre-assigned fixed monthly prices, and Fox fails to teach or suggest that the graphical user interface provides functionality that allows a user to assign a pricing model to a game package. *See* Appeal Br. 5–10; *see also* Reply Br. 2–4.

We are persuaded by Appellants’ arguments that the Examiner erred. We agree with Appellants that the Examiner has not shown that Fox teaches or suggests a graphical user interface that provides functionality for allowing a user to select a pricing model from multiple displayed pricing models and assign the selected pricing model to a game package. *See* Appeal Br. 6. Thus, we conclude the Examiner has not shown that Fox teaches or suggests all the limitations of claims 1, 8, and 15.

Accordingly, we do not sustain the Examiner’s rejection of claims 1, 8, and 15 for anticipation under 35 U.S.C. § 102(b). We also do not sustain the Examiner’s rejection of claims 2–7, 9–14, and 16–20, which depend from one of claims 1, 8, and 15.

Rejection of Claims 1–20 under § 101

The Examiner finds claims 1–20 are directed to a method of selecting subscription business models, which the Examiner identifies as a method of organizing human activity, as well as a fundamental economic practice, and thus, are directed to an abstract idea. *See* Ans. 4, 6–7, 20. The Examiner further finds claims 1–20 do not amount to significantly more than the abstract idea because the additional claim limitations either: (a) recite generic computer functions for performing the method of selecting subscription business models; or (b) link the method of selecting subscription business models to the Internet. *See* Ans. 4–8, 21–26.

Appellants argue the claims are not directed to an abstract idea because: (a) the claims are not directed to a fundamental economic practice, as the idea of “managing subscriptions” cannot be considered a fundamental economic practice because the idea is not “long prevalent in our system of commerce” and is not “a building block of the modern economy;” and (b) the claims are not directed to a method of organizing activity, as the claims do not relate to interpersonal or intrapersonal activities, transactions between people, social activities, managing human behavior in the abstract, or managing human mental activity. *See* App. Br. 10–12; *see also* Reply Br. 5–6. Appellants also argue the claims recite additional limitations that amount to “significantly more” than the abstract idea of “managing subscriptions” because the recited limitations: (a) are meaningful limitations that add more than generally linking the user of the abstract idea of “managing subscriptions” to the Internet because they solve an Internet-centric problem with a claimed solution that is necessarily rooted in computer technology; and (b) represent specific limitations other than what is well-understood, routine and conventional in the field because they are not taught or suggested by the prior art of record (i.e., Fox). *See* App. Br. 12–15; *see also* Reply Br. 7–8. Appellants also argue claims 1–20 do not attempt to preempt every application of the abstract idea of “managing subscriptions.” *See* App. Br. 15.

We are not persuaded by Appellants’ arguments. In *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, (2014), the Supreme Court articulated the required analysis for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas (which are not patent eligible under 35 U.S.C. § 101) from patents that claim patent-eligible applications

of these concepts. *Alice Corp.*, 134 S. Ct. at 2355. The first step in the analysis is to determine whether the claims at issue are directed to a patent-ineligible concept, such as an abstract idea. *Id.* If the claims are directed to a patent-ineligible concept, then the second step in the analysis is to consider the elements of the claims individually and as an ordered combination to determine whether the additional elements transform the nature of the claim into a patent-eligible application. *Id.*

With respect to the first step in the analysis, claim 1 recites an apparatus for managing a package of computer-implemented applications, the apparatus comprising one or more processors and a memory storing instructions which, when processed by the one or more processors, causes the apparatus to perform the steps of: (a) generating and transmitting first graphical user interface object data which causes a first graphical user interface object that identifies a package to be displayed; (b) generating and transmitting second graphical user interface object data which causes a plurality of graphical user interface objects that identify computer-implemented applications that implement computer-implemented services to be displayed; (c) receiving first user selection data that indicates a user selection for assignment, to the package, of computer-implemented applications; (d) generating first assignment data that indicates an assignment of the computer-implemented applications to the package; (e) generating and transmitting third graphical user interface object data which causes a second plurality of graphical user interface objects that identify available pricing models to be displayed; (f) receiving second user selection data that indicates a user selection of a pricing model to be assigned to the package; and (g) generating second assignment data that indicates an

assignment of the pricing model to the package. The focus of claim 1, therefore, is displaying computer-implemented applications and pricing models available for assignment to a package, processing a user selection of computer-implemented applications and pricing models to be assigned to the package, and displaying an indication that the computer-implemented applications and pricing models have been assigned to the package.

Similarly, non-transitory computer-readable media claim 8 and method claim 15 focus on displaying and processing data related to an assignment of computer-implemented applications and pricing models to a package.

Considering the focus of the claims, we conclude they are directed to the abstract idea of managing packages of computer-implemented applications and pricing models because they gather, process, and output data without any asserted inventive technology. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.”).

Consistent with the Examiner’s conclusion that the claims are directed to a method of organizing human activity, we conclude these claims do not merely involve a patent-ineligible concept, but “their character as a whole is directed to excluded subject matter.”⁴ *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (internal citations omitted). This conclusion is supported by the fact that the steps recited in the claims can be

⁴ As the Examiner correctly finds that the claims are directed to a method of organizing human activity, we do not reach Appellants’ argument the claims are not directed to a fundamental economic practice, as it is unnecessary to reach this argument to resolve the appeal.

performed either mentally or with “pencil and paper.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (“A method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”).

Appellants’ argument that the claims are similar to the claims in *Enfish* because the claims are directed to an improvement of existing computer technology that requires interaction between multiple computer devices (*see* Reply Br. 5) is not persuasive. Unlike the claims in *Enfish*, however, the claims in the present application fail to recite the technical details that describe the alleged improvement of the technical process of managing packages of computer-implemented applications and pricing models. Instead, the claims merely recite the abstract idea of managing packages of computer-implemented applications and pricing models along with generic computer terminology (e.g., “processors” “memory,” “client device,” etc.). Thus, the claims are merely directed to the automation of manually managing packages of computer-implemented applications and pricing models using a generic computer. Such an “improvement” is not a patentable improvement in computer technology.

With respect to the second step in the analysis, Appellants have not provided persuasive evidence or arguments that the argued limitations do anything more than recite functionality for displaying data within a graphical user interface, allowing a user to select the displayed data, and displaying a graphical indication of the user’s selection. Such functionality is well-understood, routine, and conventional in the field of graphical user interfaces. Thus, we agree with the Examiner that the argued limitations do not add “significantly more” to the abstract idea because they are “no more

than generic computer components executing generic computer functions.” *See Alice*, 134 S. Ct. at 2358 (“[T]he mere recitation of a generic computer cannot transform a patent in-eligible abstract idea into a patent-eligible invention. Stating an abstract idea while adding the words ‘apply it’ is not enough for patent eligibility”) (quoting *Mayo*, 566 U.S. at 72 (internal quotation marks omitted)). Furthermore, as the Court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Electric Power*, 830 F.3d at 1355. Thus, considering the elements of claims 1, 8 and 15 both individually and in combination, we conclude there are no additional elements that transform the nature of the claim into a patent-eligible application. *See Alice*, 134 S. Ct. at 2355.

Appellants’ argument that the claims are similar to the claims in *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) because the claims are necessarily rooted in computer technology in order to address the Internet-centric problem of how to provide user access to computer-implemented applications over the Internet (*see* App. Br. 13–14) is not persuasive. We agree with the Examiner that the claims do not describe, with sufficient particularity, a solution that is necessarily rooted in computer technology, but, instead, merely recite functionality for displaying data within a graphical user interface, allowing a user to select the displayed data, and displaying a graphical indication of the user’s selection. *See* Ans. 23. As previously explained, such functionality is well-understood, routine, and conventional functionality in the field of graphical user interfaces, and does

not amount to something that is significantly more than the abstract idea of managing packages of computer-implemented applications and pricing models.

Further, Appellants' argument that the claims represent specific limitations other than what is well-understood, routine and conventional in the field because they are not taught or suggested by the prior art of record (i.e., Fox) (*see* App. Br. 14) is also not persuasive. This argument conflates the standards of novelty under 35 U.S.C. § 102 and non-obviousness under 35 U.S.C. § 103(a) with the requirements of patent-eligible subject matter under 35 U.S.C. § 101. A lack of prior art does not direct a claim towards statutory subject matter. As the Supreme Court has said, “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981).

Regarding Appellants' argument that claims 1–20 do not preempt every application of the abstract idea of “managing subscriptions” (*see* App. Br. 15), this argument is not persuasive, as the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We have considered Appellants' other arguments regarding the patent-eligibility of the claims (*see* App Br. 15–16), and we do not find them persuasive either.

Therefore, we are not persuaded the Examiner erred in finding claims 1–20 recite patent-ineligible subject matter. Accordingly, we sustain the rejection of claims 1–20 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's rejection of claims 1–20 under 35 U.S.C. § 101.

We reverse the Examiner's rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph.

We reverse the Examiner's rejection of claims 1–20 under 35 U.S.C. § 102(b).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED